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Supreme Court, U.S.
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No. 97-969

In The

Supreme Court of the United States

October Term, 1997

DAVID KEANU SAI, Regent and Ambassador of
the Hawaiian Kingdom, *pro tempore*,
Petitioner,

v.

WILLIAM JEFFERSON CLINTON, President of
the United States of America,
Respondent.

On Petition For Writ of Mandamus

PETITIONER'S MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION FOR WRIT OF MANDAMUS; BRIEF IN SUPPORT OF MOTION; AFFIDAVIT OF DAVID KEANU SAI; EXHIBIT "A"

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NO. 97-969
IN THE UNITED STATES SUPREME COURT
OCTOBER TERM

DAVID KEANU SAI, Regent and Ambassador of the Hawaiian Kingdom, *pro tempore*, Petitioner,	PETITIONER'S MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION FOR WRIT OF MANDAMUS
vs.	
WILLIAM JEFFERSON CLINTON, President of the United States of America, Respondent.	

PETITIONER'S MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION FOR WRIT OF MANDAMUS

Comes now PETITIONER, David Keanu Sai, Regent of the Hawaiian Kingdom, *pro tempore*, and serving as Ambassador to the United States, in Pro Se, hereby moves this Honorable Court for leave to file a First Amended Petition for Writ of Mandamus. The proposed First Amended Petition is attached hereto as Exhibit "A".

This Motion is made pursuant to Rule 17(2) of the Rules of the Supreme Court and is based upon Rule 15(a) of the Federal Rules of Civil Procedure, the Brief in Support of Motion, the Affidavit of David Keanu Sai, and the Exhibit attached hereto.

DATED: Honolulu, Island of O'ahu, Hawaiian Kingdom, February 12, 1998.

DAVID KEANU SAI,
Regent and Ambassador of the
Hawaiian Kingdom, *pro tempore*,
in Pro Se

NO. 97-969
IN THE UNITED STATES SUPREME COURT
OCTOBER TERM

DAVID KEANU SAI, Regent and Ambassador of the Hawaiian Kingdom, *pro tempore*, Petitioner,	BRIEF IN SUPPORT OF MOTION
vs.	
WILLIAM JEFFERSON CLINTON, President of the United States of America, Respondent.	

BRIEF IN SUPPORT OF MOTION

On or about January 17, 1893, acting in violation of Treaties entered between the Hawaiian Kingdom and the United States of America and basic principles of international law, the United States Minister assigned to the sovereign Hawaiian Kingdom, being John L. Stevens, extended diplomatic recognition to a provisional government that was formed without the consent of the Constitutional Government of the Hawaiian Kingdom.

Thereafter in a report of a United States Presidentially established investigation conducted by former U.S. Congressman James Blount regarding the insurrection and overthrow of the Hawaiian Kingdom Government on January 17, 1893, concluded the United States diplomatic and military representatives had abused their authority and were responsible for the change in the government.

In a message to the United States Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an

"act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress", and acknowledged that by such acts the government of a peaceful and friendly people was overthrown.

President Cleveland further concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair" and called for the restoration of the Hawaiian Kingdom government.

Over one hundred years later, on November 11, 1997, a Petition for Writ of Mandamus was filed under this Court's original jurisdiction and placed on the docket on December 11, 1998.

For the purposes of expediency, judicial economy, and for a fair and complete litigation of all issues involved in this case, it is essential that PETITIONER be allowed to file PETITIONER'S First Amended Petition for Writ of Mandamus to further explain the authority PETITIONER asserts as Regent of the Hawaiian Kingdom, *pro tempore*, and serving as Ambassador of the Hawaiian Kingdom to the United States, and adding reparations for treaty violations which said violations were previously stated in the original petition. These additions are being made because of the seriousness and magnitude of the action and the blatant violations of the Treaties over the past one hundred five years. The RESPONDENT would not suffer any prejudice whatsoever by explaining the authority of PETITIONER'S public office and adding reparations for treaty violations already cited in the original petition. Therefore, since no party would suffer prejudice by the filing of PETITIONER'S proposed First Amended Petition for Writ of Mandamus, PETITIONER'S Motion should be granted.

PETITIONER contends that the Motion for Leave to File First Amended Petition for Writ of Mandamus is allowable under Rule 17(2) of the Rules of the Supreme Court for procedures in an

original action, which provides that pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed.

Rule 15(a), Federal Rules of Civil Procedure, provides in pertinent part:

> "Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of Court or by written consent of the adverse party; and leave shall be given when justice so requires. (Emphasis added.)"

As the literal terms of Rule 15(a), Federal Rules of Civil Procedure, make crystal clear, leave to amend should be freely given if justice so requires.

Additionally, it is well settled that the Amended Petition for Writ of Mandamus may be amended under Rule 15(a) at any stage of litigation. Leave to amend has been granted following a pretrial conference, and a hearing on the motion to dismiss, or for summary judgment, after a motion to dismiss has been granted, but before the order of dismissal has been entered after a case has been set for trial, at the beginning, middle, and end of trial, and after a judgment has been entered and even on remand following an appeal.

See, Archbold v. McLaughlin, 181 F. Supp. 175 (D.D.C. 1960); Raymond International Inc. vs. Bookcliff Construction, Inc., 347 F. Supp. 208 (D. Neb. 1972), affirmed per curium, 489 F.2d 732 (8th Cir. 1974) (amendment permitted after discovery completed); Goldenberg v. Worldwide Shippers & Movers of Chicago, Inc., 236 F.2d 198 (7th Cir. 1956) (amendment permitted after pretrial conference and two day before trial); Lloyd vs. United Liquors Corp., 203 F. 2d 789 (6th Cir. 1953)

(amendment permitted after argument on motion to dismiss and for summary judgment made); Lone Star Motor Import, Inc. v. Citroen Cars, Corp., 288 F.2d 69 (5th Cir. 1961) (amendment permitted after motion to dismiss granted but before entry of order of dismissal); Seifert v. Solem, 387 F.2d 925 (7th Cir. 1967) (amendment permitted on first day of trial); Maryland Casualty Co. v. Rickenbaker, 146 F.2d 751 (4th Cir. 1944) (amendment permitted during trial); Royal Indemnity Co. v. Olmstead, 193 F.2d 451 (9th Cir. 1951) (amendment permitted after entry of judgment); Galvan v. Bexar County Tx., 785 F.2d 1298 (5th Cir. 1986) (amendment permitted on remand after appeal).

In this case no prejudice will result by allowing an amendment to the original Petition, and PETITIONER should be given leave to amend. See Wright and Miller, Federal Practice and Procedure.

Based on the foregoing points and authorities, PETITIONER DAVID KEANU SAI respectfully submits that this Court should grant the instant Motion for Leave to File First Amended Petition for Writ of Mandamus.

DATED: Honolulu, Island of O'ahu, Hawaiian Kingdom, February 12, 1998.

DAVID KEANU SAI,
Regent and Ambassador of the
Hawaiian Kingdom, *pro tempore*,
in Pro Se

NO. 97-969
IN THE UNITED STATES SUPREME COURT
OCTOBER TERM

DAVID KEANU SAI, Regent and Ambassador of the Hawaiian Kingdom, *pro tempore*, Petitioner,	AFFIDAVIT OF DAVID KEANU SAI
vs.	
WILLIAM JEFFERSON CLINTON, President of the United States of America Respondent.	

AFFIDAVIT OF DAVID KEANU SAI

STATE OF HAWAI'I)
) ss.
CITY AND COUNTY OF HONOLULU)

DAVID KEANU SAI, being duly sworn on oath, deposes and says:

1. Affiant is a native Hawaiian subject appointed to the office of Regent of the Hawaiian Kingdom, *pro tempore*, since the 1st day of March, 1996, and enters the territorial jurisdiction of the United States of America as an Ambassador of the Hawaiian Kingdom government.

2. Affiant is the Petitioner in Pro Se in this action.

3. Attached hereto is Exhibit "A" being a true and correct copy of the proposed First Amended Petition for Writ of Mandamus.

4. Affiant understands that due to the unlawful presence of the United States government and its laws which stand in contravention to Hawaiian Kingdom law, a notary public commissioned

by the State of Hawai'i is required to enter this affidavit into the United States Supreme Court. Affiant does this notary requirement involuntarily and against his will, notwithstanding his allegiance and fidelity due to the Hawaiian Kingdom and its laws.

FURTHER AFFIANT SAYETH NAUGHT.

DAVID KEANU SAI

Subscribed and sworn to before me
this 12 day of February, 1998.

Michele LaRue Corboy
Notary Public, State of Hawai'i
My Commission Expires: 8/7/2001

NO. 97-969
IN THE UNITED STATES SUPREME COURT
OCTOBER TERM

DAVID KEANU SAI, Regent and Ambassador of the Hawaiian Kingdom, *pro tempore*, Petitioner, vs. WILLIAM JEFFERSON CLINTON, President of the United States of America, Respondent.	FIRST AMENDED PETITION FOR WRIT OF MANDAMUS

FIRST AMENDED PETITION FOR WRIT OF MANDAMUS

Comes now PETITIONER, David Keanu Sai, Regent of the Hawaiian Kingdom, *pro tempore*, and serving as Ambassador of the Hawaiian Kingdom to the United States, in Pro Se, and hereby amends the Petition for Writ of Mandamus filed on November 24, 1997, and placed on the docket on December 11, 1997, to further explain the authority I assert as Regent of the Hawaiian Kingdom, *pro tempore*, under Article 33 of the Hawaiian Kingdom Constitution of 1864, and as Ambassador of the Hawaiian Kingdom to the United States.

1. PETITIONER is a native Hawaiian subject and resident of the Hawaiian Kingdom and has already invoked the original jurisdiction of the United States Supreme Court under Article III, §2 of the United States Constitution and under 28 U.S.C. 1251(b)(1) on the grounds that PETITIONER is the Ambassador of the Hawaiian Kingdom to the United States.

2. In addition, the PETITIONER hereby amends his Petition for Writ of Mandamus to invoke

EXHIBIT "A"

the original jurisdiction of the United States Supreme Court under Article III, §2 of the United States Constitution and under 28 U.S.C. 1251(b)(1), on the grounds that in his capacity as Regent of the Hawaiian Kingdom, *pro tempore*, PETITIONER is a Public Minister.

3. The Hawaiian Kingdom (hereinafter also referred to as "Kingdom") was governed until 1838, without legal enactments, and was based upon a system of common law, which consisted partly of the ancient taboo, and the practices of the celebrated chiefs, that had been passed down by tradition since time immemorial. The Declaration of Rights, proposed and signed by His Majesty King Kamehameha III on June 7, 1839, was the first essential departure from the ancient ways. Declaration of Rights of 1839, preamble to the Hawaiian Kingdom Constitution of 1840.

4. The Declaration of Rights of 1839, particularly recognized that there are but three classes of persons having vested rights in the lands; 1st, the Government (i.e. the King;) 2nd, the landlords (Chiefs), and 3rd, the tenant (Native Tenants), and declared protection of the rights to both the Chiefly and Tenant classes. Estate of Kamehameha IV, 2 Haw. 719 (1864); Principles, vol. 2, Haw. Stat. laws, p. 83 (1846); Privy Council Minutes, Dec. 11, 1847, vol. 2, p. 87. These rights were not limited to the land, but included the right to "...life, limb, liberty, freedom from oppression; the earnings of his hands and the productions of his mind, not however to those who act in violation of the laws." Declaration of Rights of 1839, preamble to the Hawaiian Kingdom Constitution of 1840.

5. On October 8, 1840, His Majesty King Kamehameha III voluntarily divested himself of his absolute powers and attributes by promulgating a constitution that recognized three grand divisions of a civilized monarchy; the King as the Chief Executive, the Legislature, and the Judiciary. Hawaiian Kingdom Constitution of 1840. The

Legislative Department of the Kingdom was composed of the King, the House of Nobles, and the House of Representatives, each of which has a negative on the other. The King representing the vested right of the Government class, the House of Nobles representing the vested right of the Landlord (Chiefly) class, and the House of Representatives representing the vested rights of the Tenant (Native) class.

6. On December 20, 1849, a Treaty of Friendship, Commerce, and Navigation, between the United States of America and His Majesty King Kamehameha III, the King of the Hawaiian Islands, was concluded and signed at Washington. Ratifications by both countries were exchanged at Honolulu, island of O'ahu, on August 24, 1850, and the treaty was in force from that date, for the term of ten years, and further until either of the contracting parties shall give notice to the other of its intention to terminate. Article I of the Treaty of 1850, provides that there "...shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors." (emphasis added). Furthermore, Article VIII of the Treaty of 1850 provides that "...each of the two contracting parties engages that the citizens or subjects of the other residing in their respective States shall enjoy their property and personal security in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries, respectively." (emphasis added). In addition, Article XVI provides that any "citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation." (emphasis added). Treaty of Friendship, Commerce, and Navigation,

Aug. 24, 1850, art. I, art. VIII, and art. XVI.

7. The United States government has violated and currently stands in grave breach of this 1850 Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom. Neither country gave notice to the other of its intention to terminate the same in accordance with article XVI of the said treaty. Therefore the treaty is still in full force and legal effect until today and at all times relevant to these proceedings.

8. In 1851 the Hawaiian Kingdom Legislature passed a resolution calling for the appointment of three commissioners, one to be chosen by the King, one by the House of Nobles, and one by the House of Representatives, whose duty was to revise the Constitution of 1840. Haw. Session Laws, 1851, p. 103. The draft of the revised Constitution was submitted to the Legislature and approved by both the House of Nobles and the House of Representatives, and signed into law by the King on June 14, 1852. By its terms the Constitution would not take effect until December 6, 1852. Constitution of 1852 of the Hawaiian Kingdom.

9. On April 6, 1853, Alexander Liholiho, was named successor to the Throne by His Majesty King Kamehameha III in accordance with Article 25 of the Constitution of 1852, which provides that the "...successor (of the Throne) shall be the person whom the King and the House of Nobles shall appoint and publicly proclaim as such, during the King's life...". Roster Legislatures of Hawai'i, 1841-1918, p. 49. Constitution of 1852 of the Hawaiian Kingdom, art. 25. One year later on December 15th, His Majesty King Kamehameha III passed away and Alexander Liholiho ascended to the office of Constitutional Monarch, and was thereafter called King Kamehameha IV.

10. On November 30, 1863, His Majesty King Kamehameha IV passed away unexpectedly, and consequently left the Kingdom without a publicly proclaimed successor. On the very same day the Kuhina Nui (Premier) in Privy Council publicly

proclaims Lot Kapuaiwa the successor to the Throne in accordance with Article 25 of the Constitution of 1852, aforesaid, and was thereafter called King Kamehameha V. Haw. Privy Council minutes, vol. 8, p. 165. Pursuant to Article 47 of the Constitution of 1852, it provides that "whenever the throne shall become vacant by reason of the King's death the Kuhina Nui (Premier) shall perform all the duties incumbent on the King, and shall have and exercise all the powers, which by this Constitution are vested in the King." Constitution of 1852 of the Hawaiian Kingdom, art. 47.

11. On July 7, 1864, a Convention was called by His Majesty King Kamehameha V to draft a new constitution. Between July 7 and August 8, 1864, each article in the proposed Constitution was read and discussed until they arrived at article 62. Article 62 defined the qualification of voters for the House of Representatives. After days of debate over this article, the Convention arrived at an absolute deadlock. As a result, His Majesty King Kamehameha V, in exercising his sovereign prerogative, dissolved the convention and proclaimed a new constitution on August 20, 1864. Constitution of 1864 of the Hawaiian Kingdom, art. 62.

12. In His Majesty King Kamehameha V's speech at the opening of the Legislative Assembly of 1864, he explained his abovementioned action of dissolving the Convention "and proclaiming a new constitution" by stating that the "...forty-fifth article (of the Constitution of 1852) reserved to the Sovereign the right to conduct personally, in cooperation with the Kuhina Nui (Premier), but without the intervention of a Ministry or the approval of the Legislature, such portions of the public business as he might choose to undertake...". Roster Legislatures of Hawai'i, 1841 1918, p. 99. Article 45 of the Constitution provides that "all important business of the Kingdom which the King chooses to transact in person, he

may do, but not without the approbation of the Kuhina Nui (Premier)." This public speech before the Legislative Assembly occurred without contest, and therefore must be construed as a positive statement of the approbation of the Kuhina Nui (Premier) as required by article 45 of the said Constitution of 1852. Constitution of 1852 of the Hawaiian Kingdom, art. 45.

13. For the abovementioned reasons, the Constitution of 1864 of the Hawaiian Kingdom came into full force and legal effect and remains in full force and legal effect until today and at all times relevant to these proceedings.

14. On December 11, 1872, His Majesty King Kamehameha V had passed away without naming a successor to the Throne. As a consequence to the passing of the late King, the Legislative Assembly readied itself to exercise the constitutional authority it possessed to elect, by ballot, a native Chief to be Constitutional Monarch. Article 22 of the Constitution of 1864 of the Hawaiian Kingdom provides that "..should the Throne become vacant, then the Cabinet Council, immediately after the occurring of such vacancy, shall cause a meeting of the Legislative Assembly, who shall elect by ballot some native Ali'i (Chief) of the Kingdom as Successor to the Throne...". Constitution of 1864 of the Hawaiian Kingdom, art. 22.

15. On January 8, 1873, William Charles Lunalilo was elected as the successor to the Throne in accordance with Article 22 of the Constitution of 1864, aforesaid, but one year later on the 3rd day of February, 1874, the King died without naming a successor and the Hawaiian Legislature once again met in special session to elect David Kalākaua to the office of Constitutional Monarch on February 12th, 1874. Roster Legislatures of Hawai'i, 1841-1918, p. 126.

16. On January 30, 1875, a Convention on the subject of Commercial Reciprocity between the United States of America and His Majesty Kalākaua,

the King of the Hawaiian Islands, was concluded and signed at Washington. Ratifications by both countries were exchanged at Washington on June 3, 1875, and the treaty was in force from that date, for the term of seven years, and further until either of the contracting parties shall give notice to the other of its intention to terminate. Neither party ever gave their intention to terminate. The convention proclaims that the "...United States of America and His Majesty the King of the Hawaiian Islands, equally animated by the desire to strengthen and perpetuate the friendly relations which have heretofore uniformly existed between them, and to consolidate their commercial intercourse, have resolved to enter into a Convention for Commercial Reciprocity." The said convention also provides that "...I, Ulysses S. Grant, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof." (emphasis added). Convention of Commercial Reciprocity, June 3, 1875. The United States and the citizens thereof violated this sacred language and commitment by the President of the United States since the "illegal" overthrow of the Hawaiian Kingdom on January 17, 1893. (infra., para. 25).

17. On April 30, 1878, King David Kalākaua publicly proclaimed Lydia Kamaka'eha Dominis to be his successor to the Throne in accordance with article 22 of the Constitution of 1864, aforesaid, following the death of William P. Leleiohoku, heir-apparent, on April 10, 1877. Roster Legislatures of Hawai'i, 1841-1918, p. 138.

18. On December 6, 1884, a Supplementary Convention to limit the Convention of January 30, 1875, respecting commercial reciprocity between the United States of America and the Hawaiian Kingdom was signed at Washington. On November 9, 1887, ratifications were exchanged and the

Convention was to extend for a term of seven years from that date, and further, until the expiration of twelve months after either of the high contracting Parties shall give notice to the other of its wish to terminate the same. This Supplementary Convention provided the exclusive right of the United States government "...to enter the harbor of Pearl River in the Island of O'ahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States...". The convention proclaims that President Grover Cleveland has "caused the said convention to be made public, to the end that the same, and every article and clause thereof, as amended, may be observed and fulfilled with good faith by the United States and the citizens thereof." (emphasis added). Convention respecting commercial reciprocity, November 9, 1887. Neither party to the supplementary Convention of 1887 ever gave notice to the other of its intent to terminate the same in accordance with said convention's terms.

19. The United States Naval facilities at Pearl Harbor materially exceed the grant of authority set out in Article II of the said Convention of 1887, to "...establish and maintain there a coaling and repair station for the use of vessels of the United States..." Therefore, PETITIONER requests payments from the United States government for the excess, reparations for the breach of this treaty, and damages for all harm that has been inflicted upon the Hawaiian Kingdom by the United States government exceeding its grant of authority at Pearl Harbor. The PETITIONER shall hold these proceeds in trust for the benefit of the subjects of the Kingdom.

20. On October 16, 1886, the Hawaiian Legislature was prorogued by King David Kalākaua after it met in Legislative session for 129 days. Roster Legislatures of Hawai'i, 1841-1918, p. 156. Thereafter a new constitution was forced upon the King on July 7, 1887, without the consent or rati-

fication of the Legislative Assembly. Consequently, a new Legislature was elected while the former remained out of session. This new Legislature was not properly constituted under the Constitution of 1864 nor the lawfully executed Session Laws of the Legislative Assembly of the Hawaiian Kingdom.

21. In 1887 certain naturalized subjects of the Hawaiian Kingdom and foreign nationals, which included citizens of the United States, met in a mass meeting to organize a takeover of the political power of the native population in the Kingdom. These individuals were organized under the name "Honolulu Rifles," and threatened His Majesty King David Kalākaua with bodily harm to accept a new cabinet of ministers and a new constitution. Thereafter an election was made to organize a new Legislature, but voters, which for the first time included foreign nationals, had to swear an oath to support the new constitution before they could vote.

22. Notwithstanding the extortion of the Constitution of 1887, commonly known as the "bayonet constitution," the Constitution of 1864 and the Session laws of the Legislative Assembly enacted prior to July 7, 1887, aforesaid, still remain in full force and legal effect in the Hawaiian Kingdom as of today and have been in effect at all times relevant to these proceedings, continuously since promulgation. Article 78 of the Constitution of 1864, aforesaid, provides that all "...laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws heretofore enacted, or that may hereafter be enacted, which are contrary to this Constitution, shall be null and void." Constitution of 1864, art. 78.

23. On January 29, 1891, His Majesty King David Kalākaua passed away and his named successor, Lydia Kamaka'eha Dominis, ascended to the

office of Constitutional Monarch and was thereafter called Queen Lili'uokalani.

24. On the afternoon of January 17, 1893, a "committee of safety" that represented the American and European sugar planters, descendants of missionaries, and financiers committed the crime of high treason as defined in chapter VI, §1, Hawaiian Penal Code, by deposing Her Majesty Queen Lili'uokalani and her cabinet and proclaimed the establishment of a provisional government, and thereafter forced all Government employees to sign oaths of allegiance to the same. (Pet., para. X.)

25. In violation of treaties cited above and basic principles of international law, the United States Minister Stevens extended diplomatic recognition to the provisional government, that was formed by traitors, without the consent of the Government of the Hawaiian Kingdom. (Pet., para. XI.)

26. Soon thereafter, when informed of the risk of bloodshed with resistance, Her Majesty Queen Lili'uokalani issued a statement "temporarily" yielding her executive authority as the constitutional Monarch to the United States Government, by its President, as a fact finder, rather than to the Provisional Government. (Pet., para. XII.)

27. The report of a Presidentially established investigation conducted by former U.S. Congressman James Blount into the events surrounding the treasonous actions and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government. (Pet., para. XV.) PETITIONER requests this Honorable Court to take judicial notice of the said report by Presidential Investigator James Blount as cited in App. II, Foreign Relations of the U.S., 1894, 53d Congress, 3d sess., House of Rep., Ex. Doc. 1, part 1, Affairs in Hawai'i. PETITIONER also asserts that the United States government is bound by the con-

tents of the said Blount Report for the purpose of these proceedings.

28. In a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the traitors, described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress," and acknowledged that by such acts the government of a peaceful and friendly people was overthrown. (Pet., para. XVII.)

29. President Cleveland further concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair" and called for the restoration of the Government of the Hawaiian Kingdom. (Pet., para. XVIII.) Because of its importance, PETITIONER has attached the full text of President Cleveland's message to the United States Congress as Appendix "I."

30. President Cleveland acted as head of state in delivering the aforesaid message to the United States Congress and it was in the discharge of his "ministerial duties." Therefore the United States government today is bound under international law as well as its own organic laws, to abide by the President's findings of facts and conclusion of law surrounding the events of the illegal takeover of a peaceful and friendly country by the intervention of United States diplomats and military representatives. PETITIONER requests this Honorable Court to take judicial notice of President Cleveland's message as set forth in Appendix "I."

31. On November 11, 1917, Her Majesty Queen Lili'uokalani died, without naming a successor to the Throne in accordance with article 22 of the Constitution of 1864 in part, to wit; "...the successor shall be the person whom the Sovereign shall appoint with the consent of the Nobles, and publicly proclaim as such during the King's

life..." (emphasis added) Her Majesty Queen Lili'uokalani was unable to get the consent of the Nobles for a named successor to the Throne before her death, because the House of Nobles has been out of session since October 16, 1886. (supra., para. 20)

32. On November 3, 1993, the United States enacted Public Law 103-150, 103d Congress, (hereinafter referred to as the "apology law,") that acknowledged the 100th anniversary of the January 17, 1893 illegal overthrow of the Hawaiian Kingdom, and offered an apology to Native Hawaiians. PETITIONER directs the attention of this Court to §1(4) and §1(5) of Public Law 103-150 which provides that "the Congress expresses its commitment to acknowledge the ramifications of the overthrow of the Hawaiian Kingdom, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and (5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Hawaiian Kingdom and to support reconciliation efforts between the United States and the Native Hawaiian people." (emphasis added) Apology law, U.S. Public Law 103-150, 103d Congress, §1(4) and §1(5). Because of the importance of the apology law, PETITIONER includes the said apology law as Appendix "I," and hereby requests this Honorable Court to take judicial notice of the same.

33. Francis Anthony Boyle, Professor of law at the University of Illinois College of Law, commented on the apology law, aforesaid, in an article written in the St. Thomas Law Review, by stating that this "...law is styled as an apology, and one might say that yes, an apology is certainly here and it is long overdue. But it is not enough. When a government commits a severe violation of international law, as happened here, it should not simply apologize and then walk away. Damages are required, reparations, and in extraordinary circumstances, restitution, that is, to

return the situation to what it was before the violation...It's clear then, that the United States admitted in the law that they overthrew the Hawaiian Kingdom. There is no question or doubt that this was a clearly illegal act, under the standards of international law in existence at that time...Under international law when you have a violation of treaties of this magnitude, the World Court has ruled that the only appropriate remedy is restitution...Restitution is to restore what you once had, that is the Hawaiian Kingdom...". (emphasis added). St. Thomas Law Review, vol. 7, summer 1995, p. 726, 727, & 733. PETITIONER requests this Honorable Court to take judicial notice of said law review article by Professor Francis Anthony Boyle, attached as Appendix "III."

34. In the September 13, 1997, issue of the Vancouver Sun newspaper, Professor Francis Anthony Boyle, aforesaid, gave additional insight into the legal status of the Hawaiian Kingdom, when he stated in an interview that the "...kingdom was never lawfully terminated, therefore the kingdom still exists or should be restored...The critical point is the distinction between a state and a government...the Hawaiian Kingdom...was never validly terminated by the U.S. government." PETITIONER includes said article of an interview with Professor Francis Anthony Boyle as Appendix "IV," and requests this Honorable Court to take judicial notice of the same as an interpretation of the apology law.

35. The apology law also affirms that the native Hawaiian subjects of the Hawaiian Kingdom did not relinquish any of their vested inherent rights, which are secured to them by the Constitution and Laws of the Kingdom, and are capable of being exercised in compliance with Kingdom law. Keki'eki'e v. Edward Dennis, 1 Haw. 70 (1851); Kuki'iahu v. William Gill, 1 Haw. 91 (1851).

36. On December 15, 1995, PETITIONER and

Donald A. Lewis, both being native tenants of the Tenant class as explained above, decided to exercise their rights and powers as Hawaiian subjects, by forming a general partnership under the firm name of the Hawaiian Kingdom Trust Company, that was established under and by virtue of an "Act to Provide for the Registration of Co-partnership Firms." Chapter XXVIII, Civil Code of the Hawaiian Kingdom, Compiled Laws of 1884, p. 648. This Act provides that "whenever any two or more persons shall carry on business in this Kingdom in co-partnership, it shall be incumbent for such persons to file in the office of the Minister of Interior..." In the absence of this office and in order to comply with this statute, the partners of the Hawaiian Kingdom Trust Company found it necessary and practical to register their deed of general partnership in the Bureau of Conveyances, being the only physical remnant of the Department of Interior of the Kingdom today. According to §1249, article LI, chapter XXVI, Civil Code of the Hawaiian Kingdom, Compiled laws of 1884, p. 405, "...there shall be a bureau in the department of the Interior to be called the Bureau of Conveyance.".

37. The Hawaiian Kingdom Trust Company, aforesaid, by virtue of its registered deed of general partnership in the said Bureau of Conveyances, which said Bureau was established by §1249, aforesaid, can positively assert and claim to be part of the Government of the Hawaiian Kingdom. Article 1 of the Hawaiian Kingdom Trust Company's deed of general partnership provides that "the company will serve in the capacity of acting for and on behalf of the Hawaiian Kingdom government. The company has adopted the Hawaiian Constitution of 1864 and the laws lawfully established in the administration of the same." Doc. no. 96-000263, Hawai'i Bureau of Conveyances.

38. In the absence of the Government class and the Landlord (Chiefly) class, native Hawaiian subjects of the Tenant class (supra., para. 4),

which included PETITIONER and Donald A. Lewis, conveyed by Deeds of Trust all of their "vested" undivided right, title and interest in and to all the lands of the Hawaiian Islands to the Hawaiian Kingdom Trust Company, a general partnership, in Trust to carry out the duties as a company acting for and on behalf of the Government of the Hawaiian Kingdom in such manner as Kingdom law prescribes for the best interest of all its beneficiaries, who are native Hawaiian subjects.

39. Thereafter the Hawaiian Kingdom Trust Company acquired additional Deeds of Trust, namely document no.'s 96-004246, 96-006277, 96-014116, 96-96-026387, 96-026388, 96-028714, 96-024845, 96-032930, 96-044551, 96-044550, 96-047382, 96-047380, 96-047379, 96-047381, 96-056981, 96-052727, 96-060519, 96-032728, 96-057667, 96-057668, 96-060520, 96-061209, 96-061207, 96-056980, 96-052729, 96-063384, 96-063385, 96-063382, 96-057664, 96-019923, 96-046712, 96-063386, 96-063382, 96-063383, 96-066996, 96-061208 and 96-046711, all being registered at the Hawai'i Bureau of Conveyances. The aforesaid Deeds of Trust provide that the "...grantors, in consideration aforesaid and in order to more effectually carry out the intention of this deed doth hereby grant unto the said trustee, its successors and assigns full power to serve in the place of the absentee government, for the benefit of the same; and in the name of the trust to institute and prosecute to final judgment and execution all suits and actions at law, in equity and in admiralty for any breach or violation of Hawaiian law, at the expense of the grantors; and the same to defend if brought against the said grantors by any pretended proprietor or foreign government; and to refer any matter in dispute to arbitration and the same to settle and compromise; and to do all acts in the management of the affairs of said parties as if it were the absentee government in the capacity aforementioned." (emphasis added). The Hawaiian Kingdom Trust Company, aforesaid, had a

fiduciary duty toward its beneficiaries to serve in the capacity of the Government of the Hawaiian Kingdom, until it is completely re-established in accordance with the terms of the 1864 Constitution.

40. In order for the Government of the Hawaiian Kingdom to be re-established an executive head of state must be appointed in conformity with the laws of the Hawaiian Kingdom, to be the successor of Her late Majesty Queen Lili'uokalani. In the absence of a named successor to the Throne, (supra., para. 31) article 33 of the Constitution of 1864 provides that it "...shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne: and should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign." (emphasis added). Constitution of 1864, art. 33.

41. Pursuant to §771, article XXX, chapter XI, title 3, Civil Code of the Hawaiian Kingdom, Compiled Laws of 1884, p. 218, the "King (Monarch) appoints the members of the House of Nobles, who shall hold their seats during life." The House of Nobles last met in Legislative session in October of 1886, (supra., para. 20.) but today there are

no surviving members. Since the death of Her late Majesty Queen Lili'uokalani, there has been no Monarch to appoint individuals to the House of Nobles in accordance with the laws of the Kingdom, and consequently, there are no Noblemen to confirm a proclaimed successor or in the absence of the same, to select a native Ali'i (Chief) to be Constitutional Monarch. Constitution of 1864, art. 22.

42. As a result of these unforeseen events, with a due regard to the United State's involvement in the "illegal overthrow" of the Government of the Hawaiian Kingdom, aforesaid, which affected the Legislative representation of the vested rights of the Government class (i.e. Monarch) and the Chiefly class (i.e. House of Nobles), the remaining class, being the Tenants, is the only class capable of reconvening the Hawaiian Legislature as the House of Representatives, to elect by ballot a Regent or Council of Regency. Therefore in the absence of a Monarch to appoint a Regent or Council of Regency in accordance with article 33 of the Constitution of 1864, aforesaid, the Hawaiian Kingdom Trust Company, by its Trustees, resolved with exigence to assume the role and serve in the capacity of the Cabinet Council within the meaning of article 33, aforesaid, by virtue of its becoming part of the Government of the Hawaiian Kingdom, (supra., para. 37) until the Legislative Assembly can be assembled.

43. In these extraordinary circumstances, a Regent, *pro tempore*, should be appointed by the Trustees of the Hawaiian Kingdom Trust Company, serving in the absence of the Cabinet Council, aforesaid, to direct the Executive branch of government of the Kingdom in the formation and execution of the election of the House of Representatives in accordance with article XXXI, chapter XI, title 3 of the Civil Code of the Hawaiian Kingdom, before a full time Regent or Council of Regency can be confirmed or amended by

law.

44. Therefore, in order to receive an appointment to the public office of Regent of the Hawaiian Kingdom, *pro tempore*, by the said Trustees of the Hawaiian Kingdom Trust Company, in accordance with Article 33 of the Constitution of 1864, aforesaid, the PETITIONER, on February 20, 1996, did convey by deed all of his fifty percent (50%) undivided right, title and interest as a general partner and trustee in and to the business of the Hawaiian Kingdom Trust Company, aforesaid, to Donald A. Lewis, the other general partner and trustee of the aforesaid partnership. Doc. no. 96-026389, Hawai'i Bureau of Conveyances.

45. Thereafter, in a simultaneous transaction, Donald A. Lewis, did convey by deed a one percent (1%) undivided right, title and interest in and to the business of the Hawaiian Kingdom Trust Company to Nai'a-Ulumaimalu, as a general partner and trustee of the said partnership, to maintain a co-partnership within the meaning of an "Act to Provide for the Registration of Co-partnership Firms," aforesaid. Doc. no. 96-027002, Hawai'i Bureau of Conveyances.

46. On March 1, 1996, the Trustees of the Hawaiian Kingdom Trust Company having the fiduciary duty of serving in the absence of the Government of the Hawaiian Kingdom, namely the Cabinet Council as defined in article 33 of the Constitution of 1864, aforesaid, had appointed the PETITIONER to the public office of Regent, *pro tempore*, entrusted with the administration of the Government of the Hawaiian Kingdom during the absence of a Monarch. The PETITIONER shall hold office until such time as the Legislative Assembly (i.e. House of Representatives) shall hereafter convene to confirm or amend this appointment in accordance with article 33 of the Constitution of 1864, aforesaid. Doc. no. 96-035316, Hawai'i Bureau of Conveyances.

47. On June 30, 1996, the Hawaiian Kingdom Trust Company was dissolved in accordance with the

provisions of its deed of general partnership. Doc. no. 96-067865, Hawai'i Bureau of Conveyances. Article 1 of the Hawaiian Kingdom Trust Company's deed of general partnership provides that the company "...shall remain in existence until the absentee government is re-established upon which all records and monies of the same will be transferred and conveyed over to the office of the Minister of Interior, to have and to hold under the authority and jurisdiction of the Hawaiian Kingdom."

48. By virtue of the appointment of the Regent, *pro tempore*, on March 1, 1996, as chief executive of the Government of the Hawaiian Kingdom, and the Regent's authority to appoint the Minister of Interior under §30, chapter VI, title II, Civil Code of the Hawaiian Kingdom, Compiled Laws of 1884, p. 8, the Hawaiian Kingdom Trust Company, by its Trustees, did remise, release and forever quitclaim unto the PETITIONER, as appointed Regent of the Hawaiian Kingdom, *pro tempore*, all of its right, title and interest acquired by certain "deeds of trust" under the exclusive authority and jurisdiction of the Hawaiian Kingdom. Doc. no. 96-067865, Hawai'i Bureau of Conveyances.

49. On February 28, 1997, a Proclamation of the Regent of the Hawaiian Kingdom, *pro tempore*, was printed in the March 9, 1997, issue of the Honolulu Sunday Advertiser, proclaiming that "the Hawaiian Monarchical system of Government is hereby re-established," and "the Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code are in full force. All Hawaiian Laws and Constitutional principles not consistent herewith are void and without effect." (Pet., para. XXX.) Due to the importance of this Proclamation, PETITIONER requests this Honorable Court to take judicial notice of said Proclamation, attached as Appendix "V."

50. For all of the abovementioned reasons

the PETITIONER, as Regent of the Hawaiian Kingdom, *pro tempore*, has been discharging the functions of said office of Regent since March 1, 1996, and is a Public Minister within the meaning of that term as used in article III, §2 of the United States Constitution and under 28 U.S.C. 1251(b)(1), establishing the original jurisdiction of the United States Supreme Court.

51. On November 15, 1997, the PETITIONER did send a letter of correspondence, via U.S. certified mail, to the Honorable William Jefferson Clinton, President of the United States, notifying the same that the PETITIONER will be serving as the Ambassador of the Hawaiian Kingdom to the United States and will be filing a petition for Writ of Mandamus in the United States Supreme Court and asking President Clinton to accord the PETITIONER the proper credit due his rank and authority. This letter also notified President Clinton of the authority by which PETITIONER exercises the office of Regent, *pro tempore*, of the Hawaiian Kingdom and the conditions of his appointment. PETITIONER has been discharging the diplomatic functions of Ambassador of the Hawaiian Kingdom to the United States since the date of the aforesaid letter. PETITIONER'S Letter to President Clinton is included here as Appendix "VI." PETITIONER hereby requests the Court to take judicial notice of this Letter.

52. On November 24, 1997, a Petition for a Writ of Mandamus was filed by the PETITIONER, as appointed Regent of the Hawaiian Kingdom, *pro tempore*, within the meaning of article III, §2 of the United States Constitution, and 28 U.S.C. §1251(b)(1), and serving in the capacity of Ambassador of the Hawaiian Kingdom to the United States of America, against the Honorable William Jefferson Clinton, President of the United States.

53. PETITIONER asserts that (1) no notice of termination of the Treaty of 1850 and its Convention of 1887, aforesaid, was ever made in accordance with Article XVI of said treaty and

Article I of said convention by either of the high contracting parties; (2) all United States laws imposed in the Hawaiian Islands are inferior to said treaty and convention; and, (3) inferior laws which are inconsistent with said treaty and convention cannot be enforced. Thus PETITIONER invokes and claims said treaty rights and the expression of Hawaiian sovereignty in the name of the Hawaiian Kingdom, a sovereign nation under International law and Practice. As such, relief cannot be afforded PETITIONER by an appeal or by application for the issuance of the writ prayed for to any lower court. (Pet., para. XXXIII.)

54. That pursuant to the rules set forth in the United States Supreme Court for Extraordinary Writs under Title 28, section 1651, United States Code, and in compliance with the Treaty of Friendship, Commerce and Navigation, 1850, and the Convention of 1887, between the Hawaiian Kingdom and the United States of America, the PETITIONER requests the Court to mandate the President of the United States, namely, the Honorable William Jefferson Clinton, to;

1. Acknowledge the treaty obligations of the United States of America as mandated under Article VI, §2 of the United States Constitution.

2. Immediately execute the laws of the Hawaiian Kingdom, being the Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code, for the control and management of public affairs and the protection of the public peace until terms of transition and complete withdrawal have been negotiated and agreed upon.

3. Require all officers under the government of the State of Hawai'i and its municipal corporations to sign oaths of allegiance to the Government of the Hawaiian Kingdom in accordance with §430 and §431 of the Civil Code of the Hawaiian Kingdom, Compiled Laws, 1884, p. 105, and thereafter continue to exercise their functions

and perform the duties of their respective offices in compliance with the Civil and Penal Codes of the Hawaiian Kingdom.

4. That this Court order the RESPONDENT to guarantee that all Hawaiian laws and Constitutional principles of the Hawaiian Kingdom shall be in force until amended by the Legislative Council to be hereafter convened under and by virtue of the laws of the Hawaiian Kingdom, and in particular, the Constitution of 1864.

5. That this Court order the RESPONDENT to dispatch an Envoy Plenipotentiary to Honolulu, Island of O'ahu, to establish negotiations with the PETITIONER and to assist in the ongoing transition and reinstatement of the constitutional Government in accordance with "established" laws of the Hawaiian Kingdom and in compliance with the treaties that exist between the two nations.

6. That this Court issue a Writ of Prohibition to all legislative, executive and judicial officers of the United States of America within the territorial jurisdiction of the Hawaiian Kingdom, including all legislative, executive and judicial Officers of the State of Hawai'i and all of its municipal corporations, ordering them all to cease and desist from any of their activities, until the terms of transition and reinstatement of the constitutional Government of the Hawaiian Kingdom, aforementioned, have been negotiated and agreed upon.

7. That this Court award monetary reparations to the PETITIONER for all the harm that has been inflicted upon the Hawaiian Kingdom and its subjects by the United States government, aforesaid, to be held in trust by the PETITIONER for the Hawaiian Kingdom and its subjects, until such time as the Government of the Hawaiian Kingdom is completely re-established.

8. That this Court grant such other and further relief as is just and equitable.

DATED: Honolulu, Island of O'ahu, Hawaiian Kingdom, February 12, 1998.

DAVID KEANU SAI,
Regent and Ambassador of the
Hawaiian Kingdom, *pro tempore*,
in Pro Se